

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Review of the Emergency Alert System

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FCC 04-189

EB Docket No. 04-296

**COMMENTS OF SOUTHEASTERN MICHIGAN COUNTIES AND
MUNICIPALITIES**

SUMMARY

These comments by southeastern Michigan counties and municipalities, including the Counties of Oakland and Macomb, Armada, Belleville, Brighton, Clinton Township, Genoa Township, Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Woods, Grosse Pointe Shores, Harper Woods, Dearborn Heights, Lincoln Park, Madison Heights, Mount Clemens, St. Clair, St. Clair Shores, Sterling Heights, Troy, Utica, Lodi Township and Ypsilanti argue that the Commission should use this rulemaking to require the active participation of state, county and municipal emergency managers on State and Local Emergency Communication Committees in the drafting and approval of state and local emergency alert plans adopted under the Commission's Emergency Alert System ("EAS").

These comments point out that the consolidation of cable television headends over the last 20 years, coupled with adoption of the Commission's EAS rules, has effectively eliminated the use by municipal emergency managers of cable television systems to deliver local emergency alerts. Furthermore, these comments explain that, despite the ready availability of more advanced and reliable means of communication, the state and local emergency alert plans adopted by broadcasters under EAS rules affecting southeastern Michigan counties and municipalities require that all local alerts be funneled through county emergency management directors *by telephone* to the chief engineer of a Detroit AM radio station who has *no obligation* to activate EAS for any local alerts.

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These comments explain that Oakland and Macomb County emergency management departments, which handle emergency management for most of their cities, villages and townships, were encouraged to purchase EAS receiver/transmitters and did so. However, they are not hooked up for the automated delivery of emergency alerts to the local and alternate primary broadcast stations plans. These comments argue that the Commission should use this rulemaking to remove all roadblocks to the fast and effective delivery of emergency alerts originating at the local and regional level.

Finally, because EAS alerts are so widely broadcast, these comments argue that EAS rules should encourage rather than discourage cable television operators from acquiring the equipment needed to localize emergency alerts, consistent with the requirements of their cable television franchises and the EAS. These comments point out that the U.S. Congress required and the Commission recognizes that local governments can establish requirements for local emergency alerts through their cable television franchises and that these requirements are not preempted by the Commission's EAS rules.

I. INTRODUCTION

1. For many years before the Commission adopted rules for the Emergency Alert System (“EAS”) in 1994, municipalities included provisions in cable television franchises that required systems to provide local emergency alert capability. Most of the cable television systems built in urban areas across the country during the boom years of the late 1970s and early 1980s served a single municipality so cable television systems were an ideal means of making local emergency announcements. Local emergency alert systems were most frequently used to alert residents of a snow emergency – asking residents, for example, to move their cars off streets for snowplowing. Municipal officials sometimes used them to announce storm “watches” not made by local broadcast stations. Less frequently, they were used to warn of local flooding, boil-water alerts following a water main break, hazardous material spills or road closures.

2. Announcements on the typical local emergency alert system were initiated by a telephone call to the cable system’s headend. The caller, usually a fire or police official designated by municipal government, used a touch-tone telephone, punched in a PIN code and then read aloud over the telephone handset the emergency announcement. The alert system blacked out all channels and broadcast the audio emergency announcement. Some systems were equipped to broadcast a video message that blacked out all channels directing viewers to a government access channel where a more detailed character-generated message delivered specific emergency information. Later, systems that are more sophisticated delivered the emergency notification and instructions to tune to a government access channel as a crawl across the top or bottom of all channels. Cable television emergency alert systems provided the only direct, immediate means available for municipal officials to communicate serious life-threatening emergency information to residents.

3. However, over the past decade, the Commission’s EAS rules, the consolidation of local cable television system headends into regional centers and the addition of digital channels have generally ended the willingness and capability of cable television systems to make local emergency alerts. Although most cable television systems in southeastern Michigan today are designed following municipal boundaries, the making of local emergency announcements to subscribers within a particular municipality requires cable operators to purchase additional sophisticated equipment and connections in addition to that imposed by the Commission’s EAS rules. Furthermore, rules making voluntary the carrying of state and local EAS announcements encourage cable operators to resist franchise renewal requests that included local emergency alert capability and, otherwise, discourage cable operators from making the necessary investment.

4. The Notice of Proposed Rulemaking (“NPRM”) in this proceeding is an opportunity for the southeastern Michigan counties and municipalities to remind the

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Commission that almost all emergencies are local, a few are regional, hardly any are statewide and, as the Commission observes in the NPRM, the EAS system has never been used to issue a national alert. Accordingly, making voluntary the participation of broadcasters and cable television operators in local and state alerts, renders the entire EAS system ineffective, failing to serve important local, state and national needs.

II. BACKGROUND

5. Municipalities have renewed interest in using cable television for the making of local emergency alert systems since the terrorist attacks of September 11, for many reasons. First, EAS managers typically will not carry announcements of emergencies affecting one community. An EAS alert triggers announcements by all broadcasters and cable television operators serving an entire multi-county area, *i.e.*, the southeastern Michigan region. Thus, EAS is most effective in warning of a hurricane, tornado, severe thunderstorm or other state or national emergency affecting a large area. Local alerts on a cable television system, by contrast, typically need to go only to (a) residents of a specific municipality or municipalities and tend to address emergencies that are either (b) more localized (hazardous material spills, sudden road closures) or are (c) less severe and, in either event, are not appropriate for a much larger area. EAS managers in southeastern Michigan, therefore, only carry major alerts because broadcasters and cable television operators vigorously object to the interruption of their programming for announcements not directly affecting their viewers or listeners. They also cite fears that residents will ignore alerts if they receive too many that are not applicable to them.

6. Second, local cable television systems provide a means of notifying residents of emergencies only in the affected municipality. However, since the Commission included cable television systems in EAS, operators have generally failed to install equipment needed to localize emergency announcements as they consolidated headends or constructed new systems. For example, announcement of a snow emergency in Madison Heights, Michigan, is carried near and far by both the competitive Comcast and WideOpenWest cable television systems serving southeastern Michigan. Comcast and WideOpenWest cable television system managers deflect criticism and generate public pressure against initiating local emergency announcements by referring complaining viewers in those other communities to the Madison Heights City Hall.

7. Third, carriage of state and local alerts on the Federal EAS is not mandatory — it is purely voluntary by cable companies and broadcasters. An effective emergency alert system requires a means of communication, which is mandatory and thus can be relied upon. Including such a requirement in a cable television franchise and making mandatory the carriage of state and local alerts does this.

8. Fourth, local emergency alerts provide municipalities with an immediate, direct means of communication with their residents that does not require the cooperation or acquiescence of EAS managers with consequent possible delays, rejections of the alert or changes to it.

9. Fifth, cable television local emergency alert systems provide needed redundancy in case the EAS fails to work. Tests show the EAS sometimes fails to operate as planned. Underlying the preceding is the heightened awareness of the need for effective emergency communications for all emergencies, large and small, in the aftermath of the September 11 attacks.

10. The response to the common objection that not everyone subscribes to cable service and television sets aren't on all the time is that local emergency managers need to be provided with several means of reaching their residents in an emergency so that they can choose the ones appropriate for their situation. No system is comprehensive. For example, emergency sirens are adversely affected by wind and weather and sometimes cannot be heard in buildings. So-called reverse 911 systems do not reach people without telephones and may not reach those with cellular phones or VoIP telephony (such as a VoIP number with a different area code or exchange). Radio and television alerts can reach people quickly but radios and televisions, indeed, are not on all the time and often provide coverage far beyond the area targeted for the alert so that broadcasters generally refuse to make them.

11. The perceived weakness of using cable television to deliver local emergency alert system (68.1 percent of the U.S. households with televisions subscribe to cable and TV sets are typically on about seven hours per day) must be placed in perspective. Municipalities must be allowed a range of options so that they may select the most appropriate means of communication for any given emergency. The U.S. Cable Communications Policy Act of 1984, as amended, contemplates exactly this — municipalities in franchise renewals are required to assess their community's future cable television needs and specify franchise terms, such as cable local emergency alert systems, which they determine will meet those needs.

12. Cable television local emergency alert systems and the Federal emergency alert systems have co-existed for nearly fifty years. Cable television originated local emergency alert systems started in the 1950's with provisions in local cable franchises such as the following:

"Emergency Use of Facilities. In the case of any emergency or disaster, the grantee shall, upon request of the Mayor of the City of Ann Arbor, or of his designated agent, make available its facilities to the City of Ann Arbor for emergency [use] during the duration of such emergency or disaster.

"Emergency Alert. The system will be engineered to provide an Audio Alert System. This system would allow certain authorized officials to automatically override the "audio" signal on all channels and transmit and report emergency information." City of Ann Arbor, Michigan 1970 City Code, Chapter 32 "CATV Ordinance" at Sections 2:1119 and 2:120.

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Thus, local emergency alert systems started from the "bottom up." The preceding excerpts are typical of cable television franchises made during the boom years of the late 1970s and early 1980s. Many cable television franchises today include more sophisticated requirements conformed to EAS, allowing the franchise authority to initiate an audio and video emergency alert on all cable television channels and to transmit a video message on one designated channel in the event of an emergency:

“Emergency Alert System. Franchisee without charge shall install as a part of its Cable System, and shall operate throughout the Term, an Emergency Alert System (EAS) (or successor to that system) in accordance with all requirements imposed from time to time by the FCC, including, without limitation, the requirements that cable television systems transmit a visual EAS message on at least one channel (47 C.F.R. ' 11.51(g)(3)) and that cable systems also provide video interruption and audio EAS message on all channels, with the audio message further stating which channel is carrying the visual message (47 C.F.R- ' 11.51(g)(2)).

“In establishing Franchisee's EAS system pursuant to this Section, Franchisee shall:

“(1) Designate a channel (which may be the government channel) which will be used for emergency broadcasts of both audio and video;

“(2) Inform customers of the designated emergency channel at least weekly on at least one channel (which may be the government channel) of the multi-channel system;

“(3) Test the emergency override system not less than once every three months;

“(4) Maintain all channel text crawl capability able to be activated remotely by security measures deemed mutually agreeable by Municipality and Franchisee;

“(5) Cooperate with Municipality on the use and operation of the emergency alert override system; and

“(6) Maintain the capacity to permit Municipality in time of emergency the ability to inform viewers on all channels (such as by text crawl) to which channel to tune to receive emergency information in a manner which does not conflict with Federal EAS regulations.” City of Dearborn Heights Cable Television Franchise with Ameritech New Media, dated May 11, 1999.

13. By contrast, EAS is a product of the Cold War. It started in 1951 as Control of Electromagnetic Radiation (“CONELRAD”) and evolved in the 1960's to the

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Emergency Broadcast System ("EBS") to allow presidential and other Federal announcements in the event of an emergency. The EBS system was originally aimed at national emergencies from the "top down."

14. For the first forty years, 1950's until 1990's, these Federal requirements applied only to broadcasters. In 1992, the U.S. Cable Communications Policy Act of 1984 was amended to extend mandatory participation in what was to become EAS to cable television systems:

"[E]ach cable operator shall comply with such standards as the Commission shall prescribe to insure that viewers of video programming on cable systems are afforded the same emergency information as afforded by the Emergency Broadcasting System pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations." Cable Act Section 624(g); 47 U.S.C. Section 544(g).

In a series of rulemakings that went on for several years, the Commission adopted rules implementing the preceding statutory change. Under these regulations, in general cable systems became subject to the newly renamed "Federal Emergency Alert System" requirements on December 31, 1998 (for larger cable systems) and October 1, 2002 (for cable systems with fewer than 10,000 subscribers).

15. The result of the preceding statute and rulemakings was the revamped, current Federal Emergency Alert System referred to as the EAS system to distinguish it from its EBS predecessor with one unified system covering all radio and television broadcast stations, cable television systems and so-called wireless cable systems. EAS was designed to carry national alerts, although regional National Oceanic and Atmospheric Administration ("NOAA") weather alerts are generally carried as well. However, carriage by cable television systems and broadcasters of state and local emergency alerts is purely voluntary — not mandatory.

16. This voluntary nature of carriage by cable television systems and broadcast stations of local emergency alerts is one of the serious problems municipalities have with EAS. The current Federal system remains a "top down" system and its operation as set forth in state emergency action plans and regional, typically multi-county plans drawn up not by state and local government but by groups of broadcasters that require Commission approval mirrors this "top down" approach.

17. The Commission delegated responsibility for drawing up state emergency action plans to then existing State Emergency Coordinating Committees ("SECC") which are controlled by broadcasters and are predictably predisposed by EAS rules towards the dissemination of mandatory national emergency alerts. Thus, state plans typically do not allow direct state, county or municipal activation of voluntary EAS alert.

18. For more complete history of the Federal Emergency Alert System see, for example, *In Re Amendment of Part 73 Subpart G of the Commission's Rules Regarding*

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the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rulemaking, FCC 94-288 (December 9, 1994)("First Report and Order"), ¶¶3 and following. See the Commission's several orders to date on the revamped Federal Emergency Alert System—*First Report and Order; In Re Amendment of Part 73 Subpart G of the Commission's Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rulemaking, FCC 94-288 (December 9, 1994)("First Report and Order"); *In Re Amendment of Part 73 Subpart G of the Commission's Rules Regarding the Emergency Broadcast System*, FCC 97-338 (September 29, 1997) ("Second Report and Order"); *In Re Amendment of Part 73 Subpart G of the Commission's Rule Regarding the Emergency Broadcast Systems*, ("Third Report and Order"), FCC 98-329 (December 23, 1998) ("Third Report and Order"). The FCC's Rules are generally codified at 47 Code of Federal Regulations Part 11; the Orders are available at <http://www.fcc.gov/eb/eas/>. 6 47 CFR §§ 11.1 and 11.55.

19. Michigan's EAS Plan, drafted in 1998 by the State Emergency Coordinating Committee ("SECC"), which functions as an adjunct of the Michigan Association of Broadcasters ("MAB"), sets forth broad, general rules but delegates to 12 regional groups of broadcasters, actual operational authority over emergency alerts by local broadcasters and cable television systems serving listeners and viewers in Michigan's 83 counties. The Local Emergency Communications Committee ("LECC") of broadcasters and one cable television company serving the southeastern Michigan region – St. Clair, Macomb, Oakland, Monroe and Wayne Counties – adopted a local area plan, which delegates day-to-day administration to an NOAA weather radio station (KEC63, 162.550 MHz) and WJR-AM radio, the local primary station and WWJ-AM, the alternate local primary station. The southeastern Michigan LECC has since accepted county emergency managers among its members and considered their suggestions for changes to the local area plan but so far, has failed to adopt any. County emergency managers in St. Clair, Oakland, Macomb and Monroe Counties also sought recognition as members of a smaller sub-group of the LECC that actually approves the local area plan.

20. Before adoption of the local area plan, southeastern Michigan counties were encouraged to and did purchase EAS encoders for originating automated emergency announcements. Today, they sit idle because the local area plan requires that county emergency managers request activation for any emergency alert by telephone to the local or alternative primary stations, which, may or may not activate EAS. This gives way to uncertainty, delay, confusion and frustration.

21. Under the existing state and local plan for southeastern Michigan, certain major emergency announcements – originating from the state primary station, WKAR-FM, Lansing -- are routed to broadcasters and cable television operators in southeastern Michigan. They include all EAN, EAT, EVI, CEM, TOR and RMT digitally encoded messages received from the President, NOAA or Governor/State Police but none originating from county emergency managers. The southeastern Michigan LECC was considering the routing of severe thunderstorm ("SRV") warnings – winds of excess of 69 miles per hour – received from the NOAA. All announcements sought by county emergency managers, including any CEM, TOR SVR messages, must be verbally made

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by telephone to WJR-AM, which has vested its chief engineer with responsibility for deciding which announcements it will allow. No emergency announcements on the EAS may be initiated by any city, village or township, even those, such as Sterling Heights, Warren, Fraser and Clinton Township, for example, which manage emergency services locally rather than relying on Macomb County. Thus, county and local emergency managers are discouraged or barred from activating EAS whether they involve only a geographically isolated area or even any CEM, TOR or SVR arising locally which may affect a more widespread area.

22. Under the local area plan, carriage of EAS alerts not among those few set forth as mandatory, are completely discretionary. For example, WJR-AM refused to deliver notice of a curfew imposed by Macomb County during the electric blackout affecting Michigan and the entire northeast of the United States in the summer of 2003.

23. As is apparent from the preceding description of the Federal, state and local EAS, there is great uncertainty whether a locally or county-initiated emergency message will be carried as well as significant delays and potential changes in the wording of emergency messages.

24. Finally, even if WJR-AM or the alternate primary station, WWJ-AM, accepts a discretionary EAS announcement, under existing EAS rules and plans, carriage of locally and county-initiated alerts by all broadcasters and cable television companies remains voluntary.

III. Discussion

A. Voluntary Participation by Broadcasters and Cable Television Operators Regarding State and Local Alerts Made in Compliance with State and Local Plans Renders EAS Ineffective

25. First, as the Commission notes in ¶ 24 of the NPRM, making participation mandatory only on the national level in a system which has never issued a Presidential alert and which is instead most frequently needed to deliver vital emergency information about life-threatening local, some regional and a few statewide events, makes no good sense. EAS is upside down in failing to require participation by broadcasters and cable television operators in carrying state, county and locally initiated emergency alerts made in compliance with state and local plans approved by the Commission.

26. Without mandatory participation by all broadcasters and cable television operators, giving state, county and municipal officials a direct role in approving state and local area emergency alert plans would not achieve desired results. The Partnership for Public Warning Report observed that county emergency managers across the country frequently must rely on contacting broadcast personnel to get emergency information onto the EAS. In southeastern Michigan, county emergency managers purchased EAS equipment to originate and transmit EAS messages for relay to broadcast stations and

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cable television systems. It cannot be used because southeastern Michigan broadcasters are not required by the local area plan to cooperate in allowing automated activation.

27. In 2002, the Commission amended EAS rules to enhance the capabilities and performance of EAS during state and local emergencies, making compliance, however, with these enhancements voluntary until equipment is replaced. Unrecognized EAS messages, *i.e.*, Amber alerts, will go unrecognized by broadcasters and cable television operators who do not upgrade their equipment. Therefore, the Commission should require the making of all equipments enhancements by all broadcasters and cable television operators as recommended by the Partnership for Public Warning Report

28. Over the last 50 years, the broadcasters of southeastern Michigan have followed the lead of WJR-AM radio when setting emergency alert policy. Today, WJR-AM carries syndicated programming most of the day, giving the station a disincentive to carrying emergency announcements affecting geographic areas smaller than the reach of its signal. The alternate primary station, WWJ-AM radio, a 24-hour news station, has a much greater willingness to break into its regular programming because such interruptions more readily fit into its broadcasts and have less impact on listeners not directly affected or interested in a local or regional emergency announcement. The same is certainly true of other radio markets across the country. Keeping rules which allow broadcasters and cable television operators to avoid carrying local and regional emergency alerts affecting geographic areas smaller than the reach of their signals, lines and capabilities, renders ineffective further new rules needed giving state, county and local emergency managers a direct role to play to the development of state and local area emergency alert plans.

B. There is No Federal Preemption of Cable Television Franchise-Required Local Emergency Alert Systems

29. The communities in southeastern Michigan want to emphasize in urging mandatory participation by broadcasters and cable television systems in emergency alerts made in accordance with state and local area plans that cable television franchise requirements for a local emergency alert system cannot preempted by Commission EAS rules or by state and local area plans. Obviously, if given a meaningful role to play in the drafting of state and local area plans, communities will urge that they be adapted to franchise requirements, where applicable. However, the U.S. Congress made municipalities the sole decision maker whether a local emergency alert system is required in a cable television franchise and, if so, how and when it is activated. The Cable Act has deprived the Commission of authority to override municipal decisions over cable television local alert systems. Section 626 of the Cable Act dealing with franchise renewals governs the authority of municipalities to require local emergency alert systems in cable television franchises. 47 U.S.C. Section 546.8 As is set forth in some more detail below, in Section 626 Congress gave municipalities, not the Commission, the authority decide what provisions, such as a local emergency alert system, are necessary in a cable television franchise to meet their community needs. Under the Cable Act, a

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municipality's decision is dispositive unless appealed to the courts. 47 U.S.C. Sections 546(e), 555.

30. Appeals do not go to the Commission. Congress provided no role for the FCC in franchise renewals. By way of background, prior to the 1984 Cable Act the Commission claimed some jurisdiction with regard to the content of local cable franchises. One of the significant changes wrought by the 1984 Cable Act was in Section 626, which sets forth the process for renewing cable television franchises. It gives solely to the local municipality the authority to impose and approve franchise terms that the legislative body of the municipality determines meet the "cable related needs" of the municipality. See, for example, 47 U.S.C. Section 546 (a)(1) requiring a municipality to conduct a proceeding to identify its "future cable-related community needs and interest" and 47 U.S.C. Section 546 (c)(1)(D) which states that the failure of a cable operator's proposal for a renewed franchise to meet "future cable-related community needs and interests" is one of only four grounds upon which a municipality may deny the renewal of cable franchise. A municipality's determination of its future cable related needs is a legislative decision, which is reviewed by the courts under a jury verdict standard of review, *i.e.*, will be affirmed by the courts if there is any evidence in the record to support it. *Union CATV v. City of Sturgis*, 107 F. 3d, 434 (6th Cir. 1997).

31. Thus, Congress appropriately has made each municipality the paramount decision maker as to what is necessary in a cable television franchise to meet its needs subject only to court review under the standard just noted. By contrast, the Commission's authority regarding emergency alert systems, including any ability to regulate or preempt local alert systems required by cable television franchises, is limited to that which it possesses under the Federal Communications Act of 1934, as amended, 47 U.S.C. Section 151 *et seq.* ("the Communications Act"), of which the Cable Act is Title 6. As the Commission notes in the current NPRM, the statutory authority on which it would rely to issue revised rules regarding emergency alert systems largely rests on Section 4(i) of the Communications Act, which gives the Commission the authority to perform those acts "*not inconsistent with [the Communications] Act*" necessary to fulfill its functions. 47 U.S.C. Section 154(i).

32. Any attempt in this rulemaking to preempt cable television franchise required local alert systems would be inconsistent with the Act. The Commission has recognized that municipalities can obtain local alert systems through franchise agreements with cable operators. See *Third Report and Order* at ¶13 ("[M]unicipalities can control such [local] emergency notifications through cable franchise agreements"). At most, under the Communications Act the Commission has the authority to preempt local emergency alert requirements to the extent they interfere with the operation of the EAS.

33. Since 1992, the Commission has repeatedly rejected attempts by broadcasters and cable television companies to preempt the cable local emergency alert system requirements of cable television franchises. In the *First Report and Order* regarding emergency alert systems issued in 1994, the Commission encouraged the use of

emergency alert systems for purely local alerts: "Although not required we also encourage EAS activation for state or local emergencies." *First Report and Order* at ¶58. This encouragement came in the face of repeated opposition to local alert systems from cable operators and broadcasters. But in response to such opposition the Commission sought "further comment as to whether the existence of conflicting requirements imposed by local franchising authorities poses any threat to the Federal objective of maintaining EAS nationwide alerting capability and, if so, whether we should preempt application of these conflicting requirements." *Id* at ¶ 153.

34. In response, in its *Second Report and Order* in 1997 the Commission concluded against outright preemption of franchise requirements for local emergency alert systems, stating that "requirements of existing local franchise agreements for special warning systems will not be preempted by the EAS so long as they do not conflict with EAS requirements under our rules." *Second Report and Order* at ¶ 1. The Commission went on to say "we also note that [our] decision does not affect [a municipality's] power to require state and local emergency alerting as part of a franchise agreement." *Id.* at ¶ 22. The Commission concluded that it "saw no reason to preempt existing franchise agreements that require emergency alerting for local conditions specific to a community . . . we believe that franchising officials are most familiar with local condition and threats to their communities as well as the types of emergency information needed to respond to such threats. They are also best suited to work within their communities to develop state and local emergency alerting plans." *Id.* At ¶ 33.

C. Municipalities Are Best Suited to Drafting Local Emergency Plans

35. The Commission reached this conclusion in its *Third Report and Order* in 1998 when it stated as follows:

"[C]able systems may be better suited [than broadcasters] to provide necessary emergency information to local communities. For instance, the record indicates that many local governments view cable television systems as a primary means of notifying residents about local emergencies since municipalities can control such emergency notifications through cable franchise agreements -- control they do not have over broadcasters. The record further suggests that because broadcast stations often serve a wide coverage area crossing hundreds of communities, they may not cover local emergencies that affect only a single community. By contrast, cable franchise agreements frequently require local cable systems to cover all local emergencies. Additionally, many local governments consider cable television systems to be a primary means for alerting local residents of non-weather related emergencies, such as hazardous materials spills or local road restrictions, which tend to affect a more confined area than weather-related emergencies and therefore may not be covered by an area TV station. . . .

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“Neither NAB [“National Association of Broadcasters”] nor any commenters supporting NAB’s proposal have raised a compelling basis for changing our existing policy by regulating local EAS messages through mandatory selective override.” *Third Report and Order* at ¶ 13 (footnotes omitted, emphasis added).

The conclusion to the *Third Report and Order* contains some of the strongest language in Commission Orders in support of giving county and municipal emergency managers a significant role in the development of state and local emergency alert plans:

“We therefore decline to preempt provisions of cable television franchise agreements that require emergency messaging over all cable channels. Neither NAB nor the other commenters . . . have provided sufficient grounds for overturning our decision in the *Second R&O* not to preempt existing franchise agreements that require emergency alerting for local conditions. To the contrary, the record in this proceeding continues to support our finding that “franchising officials are most familiar with local conditions and threats to their communities as well as the types of emergency information needed to respond to such threats. *They are also best suited to work within their communities to develop state and local emergency alerting plans.*” *Id.* at ¶ 15, quoting *Second Report and Order* at ¶ 33 (footnote omitted, emphasis added).

36. Today, although best-suited to work within their communities to develop state and local emergency alerting plans, the Commission’s existing EAS rules give county and municipal officials in southeastern Michigan no role whatsoever in the development of either the state emergency alert plan adopted by the SECC and approved by the Commission or the local area alert plan subsequently adopted by the LECC. It should be explained that although the larger municipalities in southeastern Michigan have municipal emergency management coordinators – a position created by state law – most municipalities rely on county emergency coordinators.¹ The Commission should adopt

¹ . **Mich. Compiled Laws 30.409 Emergency management coordinator; appointment; duties; eligibility.**

(1) The county board of commissioners of each county shall appoint an emergency management coordinator. In the absence of an appointed person, the emergency management coordinator shall be the chairperson of the county board of commissioners. The emergency management coordinator shall act for, and at the direction of, the chairperson of the county board of commissioners in the coordination of all matters pertaining to emergency management in the county, including mitigation, preparedness, response, and recovery. In counties with an elected county executive, the county emergency management coordinator may act for and at the direction of the county executive. Pursuant to a resolution adopted by a county, the county boards of commissioners of not more than 3 adjoining counties may agree upon and appoint a coordinator to act for the multicounty area.

(2) A municipality with a population of 25,000 or more shall either appoint a municipal emergency management coordinator or appoint the coordinator of the county as the municipal emergency management coordinator pursuant to subsection (7). In the absence of an appointed person, the emergency management coordinator shall be the chief executive official of that municipality. The coordinator of a municipality shall be appointed by the chief executive official in a manner provided in the municipal charter. The coordinator of a municipality with a population of 25,000 or more shall act for and at the direction of the chief executive official of the municipality or the official designated in the municipal charter in the coordination of all matters pertaining to emergency management, disaster preparedness, and recovery assistance within the municipality.

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rules requiring state, county and municipal participation in the drafting and approving of state and local area plans, respectively. In its *First Report and Order* in 1994 the Commission observed that that the structure of the emergency alert system was “faulted as heavily as the equipment.” ¶ 131. The Commission went on to observe, “authorized sources for initiating EAS alerts should be approved and included in the state and local plan. Franchising authorities seeking to use the EAS for local alerts *must participate in the state and/or local emergency communications committee and be included in the corresponding plan.*” ¶ 135 (Emphasis added.)

37. Nonetheless, today, 10 years later, there are no state or local government representatives on the Michigan SECC. All of its members are broadcasters. There are no local government representatives on the southeastern Michigan LECC and, although there are county representatives on the LECC, the governing body approving the southeastern Michigan local area plan consists of four broadcasters, the National Weather Service and State Police. On May 5, 2003, Oakland, Macomb, St. Clair and Monroe Counties asked the LECC to make all counties (including Wayne) signatories to the local area plan so that the governing body would consist of these six and the five counties. To date, the LECC has not responded favorably. These are serious deficiencies arising from the Commission’s EAS rules, which this rulemaking can correct.

38. In ¶ 22 of the NPRM, the Commission seeks comment on whether it should adopt a federal rule establishing a standard regarding when state, county and local emergency managers must activate EAS to avoid what broadcasters and cable television operators might view as a burdensome level of program interruptions or whether the it should adopt rules requiring broadcasters to make their facilities available to local emergency managers and, if so, the nature and scope of such rules. The southeastern Michigan communities filing these comments argue that adopting a rule requiring state,

(3) A municipality with a population of 10,000 or more may appoint an emergency management coordinator for the municipality. The coordinator of a municipality shall be appointed by the chief executive official in a manner provided in the municipal charter. The coordinator of a municipality with a population of 10,000 or more shall act for and at the direction of the chief executive official or the official designated by the municipal charter in the coordination of all matters pertaining to emergency management, disaster preparedness, and recovery assistance within the municipality.

(4) A municipality having a population of less than 10,000 may appoint an emergency management coordinator who shall serve at the direction of the county emergency management coordinator.

(5) A public college or university with a combined average population of faculty, students, and staff of 25,000 or more, including its satellite campuses within this state, shall appoint an emergency management coordinator for the public college or university. Public colleges or universities with a combined average population of faculty, students, and staff of 10,000 or more, including its satellite campuses within this state, may appoint an emergency management coordinator for the public college or university.

(6) A person is not ineligible for appointment as an emergency management coordinator, or as a member of a county or municipal emergency services or emergency management agency or organization, because that person holds another public office or trust, and that person shall not forfeit the right to a public office or trust by reason of his or her appointment as an emergency management coordinator.

(7) A county coordinator may be appointed a municipal coordinator for any municipality within the county and a municipal coordinator may be appointed a county coordinator.

county and municipal participation in the drafting and approval of EAS plans would suffice. In flexible national rules regarding when broadcasters and cable television operators must activate EAS at the request of state and local emergency managers would unnecessarily preempt state and local cooperation with broadcasters and cable television operators and would stifle innovation.

D. Cable Television Emergency Alert Systems Do Not Conflict with EAS

39. Cable television operators argue that cable local emergency alert systems are preempted because they would conflict with EAS if alerts were issued on both systems at the same time. The argument is wrong because EAS rules place the obligation on the cable television operator for making EAS alerts take priority over local alerts and all other programming on the cable television system. Specifically, if an alert is initiated on the EAS and on the local cable television alert system at the same time, the EAS alert must be given precedence. The Commission's rules put the obligation on the cable operator to prevent local emergency alerts or any other programming item from interfering with Federal emergency alerts. The Commission's EAS rules state that:

"Broadcast stations and cable systems and wireless cable systems are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location. 47 C.F.R. § 11.52(e) (emphasis added).

The priority for messages on the national EAS is set by Federal rule: "A national activation of the EAS for a Presidential message with the Event code EAN . . . must take priority over any other message and preempt it if it is in progress. 47 C.F.R. § 11.44(a) & (b) (emphasis added); *see also FCC Emergency Alert System 2001 Cable Handbook*, at 10. Similarly, 47 C.F.R. § 11.33(a)(11) says, "A header code with the EAN Event code specified in § 11.31(c) that is received through any of the audio inputs must override all other messages."

40. At least one cable television operator has recognized that local emergency alert systems are not preempted by the EAS. See *Cox Com, Inc. v. City of Mesa* (Federal District Court, Arizona, Case #CV '03 1404 PHXSRB (2003-2004)). In this case, Cox challenged the City of Mesa, Arizona's requirement in its franchise for an all-channel cable local emergency alert system on the grounds, among other things, that it conflicted with and thus was preempted by the EAS. The City had imposed liquidated damages and sent a notice of violation and opportunity to cure letter due to Cox's failure to provide local emergency alerts on all cable channels. Cox ultimately agreed to dismiss its lawsuit with prejudice and include within a new cable franchise extensive provisions regarding a new all channel local emergency alert system and the testing of it for compliance with the new franchise.

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41. Cable television systems complain that alerts for moving weather systems such as tornados already arise multiple times across regions under EAS and that allowing, in addition, local emergency alerts for tornados worsens the situation for their viewers. Again, this problem arises because cable operators have failed to make the technical upgrades needed to localize alerts. It is not a failing of EAS.

42. In addition, cable local emergency alert systems are typically used only for truly emergencies and messages. Alerts regarding more severe emergencies or those covering a larger area are likely to already be carried on the EAS. Examples of the types of items leading to alerts on the cable local emergency alert system include (1) an unexpected road closing, such as due to an accident, flooding, derailment or the like, (2) a local toxic waste spill or discharge into a waterway, (3) a local gas leak with instructions to residents to stay indoors and avoid the use of open flame, localized severe weather such as flooding or storms, (4) drinking water problems such as the loss of pressure or breaks which may make the water unsafe to drink or require restrictions in water usage so as to preserve water pressure for fire protection or (5) to notify residents that snow emergency alternate side of the street parking restrictions are in effect—without these restrictions snowplows cannot easily get through and thus fire, police, EMS and other emergency vehicles could be significantly delayed.

43. As a practical matter, state and local emergency plans may be adopted which, in the procedures a county or municipality are required to follow in making a local emergency alert, specify that prior to and during any activation they monitor the same broadcaster which the local cable operator is required to monitor so that a local alert is not triggered during any EAS alert.

44. Cable television franchises often make carriage by the cable operator of state and local alerts mandatory. The Commission specifically allows municipalities to require this in franchises. *See Second Report and Order* at ¶22: "[W]e also note that [our] decision does not affect [a municipality's] power to require state and local emergency alerting as part of a franchise agreement." With respect to the cable local emergency alert system, municipal access to the system is typically only available to a limited number of pre-designated officials -- usually fire or police officials who are on duty 24 hours per day -- and have emergency preparedness responsibilities. Access is controlled by designated city officials dialing a telephone number and entering a PIN code. This allows access where appropriate from remote locations or from a cell phone. Municipalities that use a local alert system generally have clear procedures and authority regarding activation of the cable local emergency alert system and applicable rules can be included in state and local area emergency plans.

45. Due to the design of cable television systems, emergency messages in many cases today reach beyond the borders of the municipality activating the system. In some instances the cable system has been designed so that node boundaries correspond with political boundaries such that the geographic reach of emergency messages can be limited if the operator acquires necessary equipment. Due to this overlap, some

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municipalities and cable television companies often prefer that local emergency alerts be done by means of all channel "crawl" or scroll across the bottom of the screen identified the affected community. This minimizes the disruption to conventional programming as compared to "screen blanking" or "video blanking" where the entire video picture is blanked out or replaced by the emergency announcement.

46. A related approach is to target messages to residents of particular communities by having the emergency alert message direct viewers to the government channel of the municipality triggering the alert. Under this approach, for example, the emergency message is "City of Sterling Heights residents, the City of Sterling Heights is issuing an emergency alert. Comcast subscribers, please tune to the City of Sterling Heights government channel 5 for details. WOW subscribers, please tune to City of Sterling Heights government channel 10 for details." Specifics regarding the emergency are placed on city's government channel. This approach works because a municipality's government channel typically can only be viewed by residents of that municipality because cable companies can better target public, educational and government channels to a specific community than they can target emergency alerts. Thus although residents of an adjacent community might be aware that there was some kind of emergency alert in the "City of Sterling Heights" they would not be able to view the alert. This approach works well where emergency alerts go to multiple communities.

47. A different solution can use location codes included in the EAS to specify the geographic area to which an alert is targeted to help restrict emergency alerts to a particular community. Cable operators could target alerts to addressable analog or digital set top converters in the area specified by location code. However, this must be used in conjunction with a different approach, such as restricting the portion of the cable system on which the alert is disseminated for viewers with cable-ready analog televisions, because the location code will not work with such sets.

48. The actual equipment used by cable television system operators to insert the local alerts typically comes from the same vendors of EAS equipment. Some vendor equipment has built-in capability to accommodate local emergency alerts, *i.e.*, the ability to insert a local emergency alert on the cable system and make sure that any concurrent EAS test or alert overrides the local alert. Equipment makers included this capability because the local emergency alert requirement of franchises preceded by many decades cable television system carriage of EAS and cable companies must comply with both sets of requirements. Nevertheless, municipalities today seeking local emergency alert capability have found that EAS equipment from some vendors requires modifications to continue accommodating locally activated alerts. Thus, in this rulemaking, the Commission should address the technical need of cable television operators to accommodate both EAS and local emergency alerts.

Respectfully Submitted,

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